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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA)
Plaintiff,)
v.)
1. APPROXIMATELY \$61,505.00 IN)
UNITED STATES CURRENCY, and)
2. APPROXIMATELY \$34,320.00 IN)
UNITED STATES CURRENCY,)
Defendants.)
FRANK JOSEPH ALIOTO, JR.,)
Claimant.)

Nos. C-07-5413 MMC
08-0318 MMC
(Related Cases)

JOINT CASE MANAGEMENT STATEMENT

CMC Date: September 19, 2008
Time: 10:30 a.m.

Courtroom 7, 19th Floor

FRANK JOSEPH ALIOTO, JR.,

Claimant.

Plaintiff, United States of America and claimant, Frank Joseph Alioto, Jr., respectfully submit this Joint Case Management Statement.

1. Jurisdiction and Service

1 This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and
2 1355 and Title 21, United States Code, Section 881(a)(6). There are no counterclaims. Plaintiff
3 contends that it has served notice of this action on all persons who may have an interest in the
4 property. Frank Joseph Alioto, Jr., ("Alioto"), represented by David Michael, has filed a verified
5 claim and an answer in both cases. To date, no other claims have been filed in this action.

6 **2. Facts**

7 The Court has before it two civil forfeiture cases which were consolidated by the Court in
8 January 2008. The first, Case No. 07-541 MMC, is a civil forfeiture action against
9 approximately \$61,505 in United States Currency seized from Frank Alioto, Jr. at the San
10 Francisco Airport on May 30, 2007. The complaint sets forth the details of the May 30, 2007,
11 seizure. It also sets forth facts concerning another seizure of funds (\$34,320) from Frank Alioto,
12 Jr., which took place at the Oakland Airport on August 16, 2007. The second seizure was not
13 charged in the initial complaint because the funds were then in the administrative forfeiture
14 process. If no claim was filed, a judicial forfeiture proceeding would not have been necessary.
15 However, Frank Alioto, Jr. did file an administrative claim and the case was referred to the
16 United States Attorney's office for civil forfeiture.

17 On January 17, 2008, the United States filed a complaint seeking forfeiture of the
18 defendant \$34,320 which was seized at the Oakland Airport on August 16, 2007. The complaint
19 was assigned to Judge Conti. (CV-08-0318 SC) The complaint set forth the same facts regarding
20 the first and second currency seizures alleged in the first complaint, with a few additions in
21 paragraphs 29, 30 and 31.

22 Given the similar and overlapping nature of the parties, facts and legal issues, the parties
23 stipulated that the cases should be related. On January 29, 2008, this Court related the cases.

24 **3. Principal Factual and Legal Issues**

25 The principal factual and legal issues in dispute are: 1) whether plaintiff can establish by
26 a preponderance of the evidence that the defendant currency is drug proceeds and thus forfeitable
27 under Title 21, United States Code, Section 881(a)(6) and 2) whether claimant, Alioto, can
28 establish by a preponderance of the evidence that he is the innocent owner of the defendant

1 currency.

2 **4. Anticipated Motions**

3 All parties may move for summary judgment at the close of discovery. Claimant filed a
4 Motion to Suppress in case C 07-5413 MMC, United States v. \$61,505, which was fully briefed
5 and taken under submission by this Court on July 25, 2008.

6 **5. Relief/Damages**

7 Plaintiff seeks a judgment of forfeiture of the defendant currency. This is not a damages
8 case. Claimants seek the return of the defendant currency.

9 **6. Settlement**

10 At this juncture, matters are far too undeveloped to ascertain the possibility of settlement.

11 **7. Discovery**

12 This is an *in rem* forfeiture case and is exempt from initial disclosures pursuant to Federal
13 Rule of Civil Procedure 26 (a)(1)(B)(ii). The parties have exchanged interrogatories, requests
14 for admissions, and responses. The parties have postponed any further discovery pending a
15 ruling by the Court on the Motion to Suppress.

16 **8. Alternative Means of Disposition**

17 Plaintiff does not request reference to arbitration.

18 **9. Pretrial/Trial Issues**

19 The parties have not yet discussed any trial issues.

20 **10. Class Action**

21 This is not a class action.

22 **11. Related Case**

23 There are no other related cases.

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12. Other Matters –

The parties suggest that the case management conference, currently scheduled for September 19, 2008, should be continued for approximately four months or until such time as the Court issues a ruling on the Motion to Suppress.

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

Dated: September 12, 2008

/S/
SUSAN B. GRAY
Assistant United States Attorney

Dated: September 12, 2008

/S/
DAVID M. MICHAEL, ESQ.
EDWARD M. BURCH, ESQ.¹
Attorneys for Claimant, Frank Joseph Alioto, Jr.

¹Counsel for the United States contacted Mr. Michael's law office and was informed he was out of the country. Mr. Burch, his co-counsel, approved the e-filing of the CMC statement.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she caused a copy of

- Joint Case Management Statement

to be served this date via electronic mail delivery upon the person(s) below at the place(s) and address(es) which is the last known address(es):

David Michael, Esq
101 California Street, Suite 2450
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Attorney for Frank Alioto Jr.
Email: dmmp5@aol.com

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 12th day of September, 2008, at San Francisco, California.

/S/
CAROLYN JUSAY
Legal Assistant
Asset Forfeiture Unit